UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

ERIC D. MURPHY, Plaintiff	
v.	Civil No. 98-439-P-C
MARTIN MAGNUSSON, *et al.*, Defendant	

Gene Carter, District Judge,

MEMORANDUM AND ORDER ON MAGISTRATE JUDGE'S RECOMMENDED DECISION

On December 17, 1998, while incarcerated at Maine Correctional Center, *pro se* Plaintiff, Eric D. Murphy, proceeding *in forma pauperis,* filed a four-count Complaint under 42 U.S.C.A. § 1983 (Docket No. 2) against Correctional Medical Services ("CMS") and a number of prison officials and employees. In Count I (Complaint ¶ 42)[1] of the Complaint, Plaintiff claims that the alleged deliberate indifference exhibited by CMS and two of its employees[2] ("Count I Defendants") to his serious medical needs constituted a deprivation of his constitutional rights guaranteed under the Eighth Amendment. In Counts II and III (Complaint ¶ 40), Plaintiff alleges that several prison officials[3] denied his requests first to transfer to Charleston Correctional Facility and second, to the Bangor Pre-release Center solely on the basis of his disability, in violation of the Americans with Disabilities Act, 42 U.S.C.A. § 12101 *et seq*. ("the ADA"), and

[1] Plaintiff does not number the Counts alleged in the Complaint. However, the Court will number them for the sake of organization and clarity.

[2] These CMS Services employees are Walker and Rouillard. *See* Complaint ¶ 42.

[3] These prison officials are Marcoux, Howard, Christensen, and Lowell. *See* Complaint ¶ 40.

section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. § 794. In Count IV (Complaint ¶ 41), Plaintiff alleges that several other prison officials[4] failed to "take action to curb the known pattern of discrimination," in violation of the Fourteenth Amendment. Plaintiff seeks a declaratory judgment, monetary damages, and an injunction ordering various relief including that prison officials arrange for Plaintiff to be evaluated by a qualified physician and that prison officials comply with the ADA and the Rehabilitation Act.

On April 15, 1999, the Count I Defendants filed a motion to dismiss and contended that Plaintiff's Complaint must be dismissed against them because Plaintiff failed to exhaust his administrative remedies. United States Magistrate Judge Beaulieu issued an order on May 24, 1999, recommending that Plaintiff's Complaint be dismissed as to all Defendants because Plaintiff failed to exhaust his administrative remedies (Docket No. 12) ("Recommended Decision").[5] In response to the Recommended Decision, Plaintiff sought to amend his Complaint with allegations of his attempts to obtain redress through the grievance procedure (Docket No. 13). Treating Plaintiff's motion to amend his Complaint as a motion to reconsider his earlier Recommended Decision, Magistrate Judge Beaulieu declined to vacate his earlier Recommended Decision (Docket No. 14). He found that Plaintiff's allegations concerning various difficulties with the grievance procedure did not amount to a showing that he had exhausted his administrative remedies.

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[4] These prison officials are Magnusson, Clemons, McKeen, and Blanchard. *See* Complaint ¶ 41.

[5] On May 21, 1999, the defendants to what the Court has labeled Counts II, III, and IV, filed a motion to dismiss these counts on the ground that the defendants could not be sued in their individual capacities for violations of the ADA or the Rehabilitation Act (Counts II and III) and that plaintiff failed to allege sufficient facts of deliberate indifference to sustain a claim for violation of the Fourteenth Amendment (Count IV). Because Magistrate Judge Beaulieu's Recommended Decision recommended the dismissal of the Complaint against all defendants, the motion to dismiss Counts II, III, and IV, has not yet been considered by the Court and remains to be considered by the Magistrate Judge.

On June 8, 1999, shortly after the Recommended Decision was issued, Plaintiff was released from prison. *See* Objection of Defendants Correctional Facility Medical Services, Jackie Walker, and Ren Rouillard to Plaintiff's Objection to Magistrate Judge's Recommended Decision at 3. Before the Court is Plaintiff's objection to the Recommended Decision and responses thereto.

The Court will first consider whether Plaintiff's case, by virtue of his release from prison, is now moot. Whether a case is moot may be raised by a federal court on its own and at any stage of the proceedings. *See North Carolina v. Rice*, 404 U.S. 244, 246 (1971). It is a well-established principle of law that an actual controversy must exist at all stages of federal court proceedings. If events subsequent to the filing of the case resolve the dispute and the parties no longer have a legally cognizable interest in the outcome, the case should be dismissed as moot. *See Murphy v. Hunt*, 455 U.S. 478, 481 (1982). Here, Plaintiff was released from prison and, consequently, a favorable decision on his request for a medical examination, to be transferred, and to receive medication, mattresses, and shoes would not provide him with relief. However, this case will not be dismissed as moot because some injury remains that could be redressed by a decision favorable to Plaintiff in this case. Here, Plaintiff seeks money damages in addition to injunctive relief and may, therefore, continue to pursue his case, even though his request for an equitable remedy is rendered moot. *See Murphy*, 455 U.S. at 482; *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 370-71 (1982). Accordingly, Plaintiff's case is not moot.

The central contention between the parties is whether Plaintiff was required to exhaust his administrative remedies before he filed this lawsuit. Plaintiff contends that he was not required to exhaust administrative procedures because the grievance procedure in place at the Maine Department of Corrections ("the MDOC") did not provide for the relief sought -- monetary damages. The Court disagrees with Plaintiff.

Exhaustion of administrative remedies is required if explicitly mandated by Congress. *See McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). But where Congress has not clearly

required exhaustion, sound judicial discretion governs. *See id.* Title 42 U.S.C.A. § 1997e(a), as amended by the Prison Litigation Reform Act of 1995, Pub. L. 104-134, Title I, § 101[(a)][Title VIII, § 803(d)], Apr. 26, 1996 ("the PLRA"), mandates that a prisoner exhaust administrative remedies prior to filing a section 1983 suit. It clearly provides that,

> No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

42 U.S.C.A. § 1997e. Although the pre-PLRA section 1997e(a)[6] provided a more limited exhaustion requirement, granting district courts discretion whether to require a prisoner to exhaust administrative remedies, the amended statute now clearly requires prisoners to first pursue challenges to the conditions of their confinement though the highest level of the available administrative procedures.[7] In so doing, Congress intended section 1997e(a) to "curtail the ability of prisoners to bring frivolous and malicious lawsuits by forcing prisoners to exhaust all administrative remedies before bringing suit in Federal court." *Alexander v. Hawk*, 159 F.3d 1321, 1324 (11th Cir. 1998), *reh'g en banc denied*, 172 F.3d 884 (11th Cir. 1999) (citing 141 Cong. Rec. H. 472-06, *H1480 (daily ed. Feb. 9, 1995)). Consequently, the PLRA mandates that

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[6] The previous version of section 1997e(a) provided as follows:

> (1) Subject to the provisions of paragraph (2), in any action brought pursuant to section 1983 of this title by an adult convicted of a crime confined in any jail, prison, or other correctional facility, the court shall, *if the court believes* that such a requirement would be appropriate and in the interests of justice, continue such case for a period of not to exceed 180 days in order to require exhaustion of such plain, speedy, and effective administrative remedies as are available.

42 U.S.C.A. § 1997e(a)(1) (amended 1996) (emphasis added).

[7] Title 42 U.S.C.A. § 1983 creates a civil cause of action for any person deprived of any rights, privileges, or immunities, secured by the Constitution and laws, by another person acting under color of state law.

Plaintiff exhaust the available administrative remedies before filing his section 1983 claim in this Court.

The fact that the administrative procedures at Maine Correctional Center do not provide for monetary relief does not relieve Plaintiff of his onus to exhaust the available administrative proceedings. It is true, as Plaintiff points out, that there is a split in the case law regarding whether a plaintiff must exhaust administrative remedies where the plaintiff has requested only monetary relief which is not available under the administrative procedures. A number of courts have determined that the so-called inadequacy exception does not survive the new mandatory exhaustion requirement of the PLRA, *see Wendell v. Asher,* 162 F.3d 887, 890-91 (5th Cir. 1998); *Alexander*, 159 F.3d at 1325-26, while a number of courts have determined that it does, *see Garrett v. Hawk*, 127 F.3d 1263, 1266 (10th Cir. 1997). Despite the existence of this conflict, it is immaterial here. Plaintiff requests injunctive and declaratory relief in addition to money damages. Even prior to the amendment to the PLRA, courts held that prisoners seeking injunctive and declaratory relief in addition to money damages must exhaust available administrative procedures even if those procedures do not provide for money damages. *See McCarthy*, 503 U.S. at 153 n.5; *Arvie v. Stalder*, 53 F.3d 702, 706 (5th Cir. 1995); *Irwin v. Hawk*, 40 F.3d 347, 348-49 (11th Cir. 1994), *cert. denied*, 516 U.S. 835 (1995); *Young v. Quinland*, 960 F.2d 351, 356 n.8 (3d Cir. 1992). Accordingly, Plaintiff was required, as Magistrate Judge Beaulieu found, to exhaust the available administrative remedies prior to filing his section 1983 action.[8]

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[8] Defendant argues, and the Court agrees, that the Supreme Court case of *McCarthy v. Madigan*, is inapposite. In that case, the Supreme Court, after finding that 42 U.S.C.A. § 1997e did not mandate exhaustion, held that a federal prisoner was not required to exhaust administrative remedies prior to bringing a *Bivens* action for denial of medical care because the administrative procedures were not empowered to grant the relief sought -- monetary damages. 503 U.S. at 148-149. However, *McCarthy* was decided before Congress amended the exhaustion requirement with the PLRA to mandate exhaustion of administrative remedies and, thus, was interpreting the limited and discretionary exhaustion requirement embodied in the pre-PRLA version. Furthermore, the petitioner in *McCarthy* sought only monetary relief, thus rendering the

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The question remains, however, whether the Court should dismiss Plaintiff's Complaint now that Plaintiff has been released from prison, a circumstance that arose after Magistrate Judge Beaulieu's Recommended Decision was issued. Had Plaintiff, after he was released from prison, brought the present suit that, in its present formulation, includes claims for monetary damages under the ADA, the Rehabilitation Act, and section 1983 for violation of his constitutional rights, the PLRA exhaustion requirement would not apply to him. *See Kerr v. Puckett*, 138 F.3d 321, 323 (7th Cir. 1998) (because PLRA applies only to suits brought by "prisoners" it would not be applied to a suit by one no longer "confined," "incarcerated," or "detained" in a correctional facility). In addition, a plaintiff is not required to exhaust administrative remedies prior to bringing claims under Title II of the ADA and the Rehabilitation Act against a non-federal employer. *See* 42 U.S.C.A. § 12133; 42 U.S.C.A. § 794a(a)(2); *Tyler v. City of Manhattan*, 857 F. Supp. 800, 812 (D. Kan. 1994); *Ethridge v. State of Alabama*, 847 F. Supp. 903, 906-07 (M.D. Ala. 1993); *Noland v. Wheatley*, 835 F. Supp. 476, 482 (M.D. Ind. 1993); *Petersen v. University of Wisconsin Bd. of Regents*, 818 F. Supp. 1276, 1278-79 (W.D. Wis. 1993). Thus, there is no longer any administrative agency to apply its special expertise to Plaintiff's claims and attempt to resolve them prior to their being put before this Court. If the Court were to dismiss Plaintiff's claims, Plaintiff could immediately refile his Complaint for money damages, the only viable claims at this point, without exhausting administrative remedies. Under these circumstances, where Plaintiff could immediately refile his claims without exhausting administrative remedies, the Court determines that it would not serve judicial efficiency to dismiss Plaintiff's Complaint. Because circumstances have changed such that Plaintiff is no longer required under the law to exhaust administrative procedures, the Court will not now require Plaintiff to exhaust available

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[8](...continued)
administrative process in that case incapable of redressing the petitioner's claims. Here, as explained, Plaintiff seeks equitable relief in addition to monetary damages. Thus, in this case, exhaustion principles are applied differently because through the administrative process, Maine Correctional Center could possibly have provided Plaintiff with at least part of the relief he requested. *See McCarthy*, 503 U.S. at 153 n.5

administrative remedies. *See Young*, 960 F.2d at 356 n.8. Accordingly, the Court does not accept this Recommended Decision, and Plaintiff's Complaint will not be dismissed for failure to exhaust administrative remedies.

Having determined that Plaintiff's Complaint will not be dismissed for failure to allege facts that show that he exhausted his administrative remedies, the Court will address the remaining arguments in Count I Defendants' motion to dismiss. The Count I Defendants claim that Plaintiff's section 1983 claim for deliberate indifference to his serious medical needs must be dismissed because Plaintiff fails to allege facts that tend to show that he suffered from a serious medical need and that Defendants exhibited deliberate indifference. The Court agrees.

The Constitution "does not mandate comfortable prisons," but neither does it permit inhumane ones, and it is now settled that "the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (internal quotations omitted). "[Eighth Amendment] claims by pretrial detainees alleging denials of medical assistance essentially turn on whether the challenged official action constituted 'deliberate indifference' to a serious 'medical need.'" *Mahan v. Plymouth County House of Corrections*, 64 F.3d 14, 17 (1st Cir. 1995) (citation omitted); *Bowen v. City of Manchester*, 966 F.2d 13, 17 n.13 (1st Cir. 1992). A medical need is "serious" if it has been diagnosed by a physician as mandating treatment, or is so obvious that even a lay person would easily recognize the necessity for a doctor's attention. *See Mahan*, 64 F.3d at 18 (citing *Gaudreault v. Municipality of Salem, Mass.*, 923 F.2d 203, 208 (1st Cir. 1990), *cert. denied*, 500 U.S. 956 (1991)). To show deliberate indifference, "a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). In order for prison officials to be found deliberately indifferent to the medical needs of detainees, prison officials must be shown to have been subjectively aware of a condition requiring their intervention. *See Mahan*, 64 F.3d at

18 (citing *Farmer*, 511 U.S. 825). "'A complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment . . .'" *Rodriguez v. Joyce*, 693 F. Supp. 1250, 1253 (D. Me. 1988) (citing *Estelle*, 429 U.S. at 106, 97 S. Ct. at 292).

The following facts that pertain to Plaintiff's Eighth Amendment claim can be gleaned from Plaintiff's Complaint: On or about June 20, 1998, Plaintiff requested more pain medication, extra mattresses, and a new pair of sneakers from CMS, and his request was denied; on July 17, 1993, Plaintiff had surgery on his back; on October 26, 1998, CMS indicated to Plaintiff that it had acquired a pair of orthopedic shoes that Plaintiff could have after he completed an appointment with a physician; on November 18, 1998, Plaintiff submitted another request for extra mattresses, shoes, and medication for his constant pain. *See* Complaint ¶¶ 29, 31, 33, 34, 35. The facts indicate that Plaintiff suffered from a back injury and, although he received some treatment including surgery, he did not receive an extra mattress, orthopedic shoes, or as much pain medication as he requested. Without deciding whether Plaintiff's medical condition was sufficiently serious, this alleged conduct on the part of CMS and its staff, even if proven, would not rise to the level of "deliberate indifference." *See, e.g.*, *Johnson v. Williams*, 768 F. Supp. 1161, 1165 (E.D. Va. 1991); *Frisbee v. Dzuba*, 1996 WL 650526 *2 (N.D. Ill.). Because there are no facts alleged which, if proven, would demonstrate that CMS or its employees were deliberately indifferent to Plaintiff's medical needs, the Court will dismiss Count I of Plaintiff's Complaint against CMS and its employees.

To conclude, the Court determines that it will not dismiss Plaintiff's Complaint in its entirety for failure to exhaust administrative remedies mandated under the PLRA. However, the Court concludes that it will dismiss Count I of the Complaint because Plaintiff has failed to allege sufficient facts that, if proven, would show that CMS and its employees acted with deliberate indifference to Plaintiff's serious medical needs. Accordingly, the Court **ORDERS** that the motion to dismiss count I (Docket No. 7) be, and it hereby is, **GRANTED**.

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GENE CARTER
District Judge

Dated at Portland, Maine this 27th day of July, 1999.